REMARKS

Claims 1-15 are pending.

I. The Restriction Requirement and Applicant's Provisional Election

The Examiner required restriction, under 35 U.S.C. § 121, and considers the application to contain separate and distinct inventions, directed to three groups designated Groups I-III.

Additionally, the Examiner believes that groups I-III are drawn to products or methods containing multiple sequences. Therefore, if Groups I-III are elected, the Examiner believes a single sequence must be chosen for examination.

In response, Applicants hereby elect, **with traverse**, Group I, claims 1-11, drawn to an isolated polynucleotide comprising a functional vascular tissue specific *E. grandis* cOMT promoter, constructs comprising said promoter and host cell comprising said constructs. Applicants also elect SEQ ID No: 113 for examination.

II. The Search Of Additional Sequences SEQ ID No: 12 and 60 Is Not Unduly Burdensome

Applicants have elected Group I and SEQ ID No: 113. The current invention is drawn to a cOMT promoter sequence. SEQ ID Nos. 12 and 60 also contain portions of the cOMT promoter. Therefore, Applicants do not believe there is any additional burden on the Office. SEQ ID NO: 12 is a portion of the longer SEQ ID No: 113 (See positions 1019-1675). In addition, SEQ ID No: 60, from positions 41 to the end, is also contained within SEQ ID No: 113. As the three sequences contain extensive identity, Applicants believe the search and examination of these sequences can be made without serious burden. See MPEP § 803.

Applicants also note MPEP § 803.04 (August 2005) which states:

> It has been determined that normally ten sequences constitute a reasonable number for examination purposes. Accordingly, **in most cases, up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction**. In addition to the specifically selected sequences, those sequences which are patentably indistinct from the selected sequences will also be examined. Furthermore, nucleotide sequences encoding the same protein are not considered to be independent and distinct inventions and will continue to be examined together.

As the claims and above regulations provide for the examination of multiple sequences, Applicants urge the examination of SEQ ID Nos: 12, 16, and 113 with regards to the present application and believe such an examination is not unduly burdensome.

III. The Search Of Groups II and III With Regards to the Elected Sequence Is Not Unduly Burdensome

Applicants additionally traverse the restriction requirement on the grounds that the search and examination of Groups II and III with regards to the elected sequence SEQ ID No: 113 is not unduly burdensome. According to MPEP section 803 "if a search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent and distinct inventions." As groups II and III are to growing and analyzing plants with the elected sequence, Applicants suggest examination of Groups II and III can be made without serious burden. In particular, as Applicants have elected Group I, SEQ ID No: 113, it is respectfully requested that claims of Group II and III be rejoined with the claims of Group I.

As noted above, Applicants believe SEQ ID Nos: 12, 60 and 113 should be examined. As all of the sequences are for cOMT promoters, Applicants suggest examination of Groups I-III can be made without serious burden. In particular, Applicants respectfully request that claims of Groups II-III be rejoined with the claims of Group I for the examination of SEQ ID Nos: 12, 60, and 113.

IV. The Search Of Groups II and III With Regards to the Elected Sequence Is a Combination/Subcombination

The Examiner also appears to be alleging that the isolated polynucleotide of Group I and the plant and methods of Groups II and III (claims 12-14 and 15) are patentably distinct from each other because they are separate products or products and process of use. However, the Examiner has failed to recognize that the plant and methods of producing the plant by transforming the plant of Group II with the genetic construct of Group I results in a plant containing the genetic construct of Group I. Therefore, these inventions, a polynucleotide/genetic construct and a plant containing the genetic constructs of Group I, are substantially related, and as such this restriction is not proper.

Specifically, the polynucleotides and genetic constructs of Group I and the plant and methods of Group II are related as subcombination and combination. Applicants note that the MPEP 806.05(c) describes, "where the relationship between claims is such that the separately claimed subcombination ($B_{specific}$) constitutes the essential distinguishing feature of the combination ($AB_{specific}$) as claimed, the inventions are not distinct and a requirement for restriction must not be made, even though the subcombination has separate utility." Herein, all the limitations of the subcombination claims (i.e., polynucleotides and constructs of the claims of Group I, are reiterated in the combination claim (i.e., plant and methods of Group II). Therefore, restriction between Groups I and II is in error and should be reconsidered so that claims 12-14 are examined with Group I.

For the same reasons, the method of Group III (claim 15) transforms a plant with the genetic construction of Group I to identify a gene. Applicants submit that all the limitations of the subcombination claims (i.e., polynucleotides and constructs of the claims of Group I, are reiterated in the combination claim (i.e., method of Group III). Therefore, restriction between Groups I and III is in error and should be reconsidered so that claim 15 is examined with Group I.

V. Conclusion

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application. If there are any fees due in connection with the filing of this response, please charge the fees to Deposit Account No. 50-1283. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should be charged to our Deposit Account.

Respectfully submitted,

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